

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Adversary Proceeding
LEROY WALKER)	
(Chapter 7 Case <u>96-20348</u>))	Number <u>96-2076</u>
)	
<i>Debtor</i>)	
)	
)	
)	
LEROY WALKER)	
)	
<i>Plaintiff</i>)	
)	
)	
)	
v.)	
)	
BYRON DALE LEGGETT)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

On November 15, 1996, Debtor filed Chapter 7 bankruptcy; Debtor initiated this adversary proceeding on November 25, 1997, seeking a determination that a judgment debt he owes Defendant, Byron Dale Leggett, is dischargeable. Defendant filed a response alleging that the debt should be declared nondischargeable inasmuch as the judgment derives from a State Court action, filed by the Defendant in this case, which

alleges that Leggett was injured in an automobile collision which was caused *inter alia* from negligence of the Debtor “in driving an automobile while driving under the influence of alcohol” to the extent that he was a less safe driver. Based on the evidence adduced at trial on June 19, 1997, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Defendant's complaint was filed January 31, 1994, in the State Court of Glynn County alleging several alternative grounds of liability, one of which was that the Debtor caused the collision as a result of his driving under the influence of alcohol (Exhibit P-2). Debtor never filed responsive pleadings in the State Court; as a result, when the matter was scheduled for trial, liability was deemed admitted. Thus the only issue presented to the jury was to set damages. The jury heard evidence and rendered a verdict in the amount of \$17,601.15 actual damages and \$5,000.00 punitive damages on April 11, 1995. On April 12, 1995, the Honorable Orion L. Douglass, Judge of the State Court of Glynn County, entered judgment on the jury verdict. *See* exhibits to Defendant's Answer.

Debtor now contests the fact of his DUI status at the time of the collision. He testified on June 19, 1997, that his obscured vision due to the existence of another vehicle in the oncoming turn lane caused the collision as he made a left turn. Debtor

denies having consumed any alcoholic beverages and relies on the police report which indicates that the vehicle smelt of alcoholic beverage, but that Debtor was not impaired.¹ According to Debtor, he had a passenger in the car who was carrying an open beer can which spilled as a result of the force of the collision. In fact, Exhibit P-1 reveals that Debtor was charged with failure to yield, but not with DUI or any other vehicular charges.

Based on this evidence, Debtor contends that the collision has not been established as arising from his driving under the influence and as a result the judgment obligation should be held discharged. Leggett contends that the admission by failure to contest the allegations of the State Court complaint that Debtor was driving under the influence is *res judicata* and binding on the Debtor in these proceedings and that the debt should be determined nondischargeable under 11 U.S.C. Section 523(a)(9).

CONCLUSIONS OF LAW

Two bars exist that prevent the relitigation of matters: *res judicata* and collateral estoppel. After review of the applicable authorities, I find that neither *res judicata* nor collateral estoppel applies in this instance.

¹ Specifically, the report stated, "Walker's vehicle smelt of alcoholic beverage. Walker was given field sobriety tests and passed them. He did not appear to be impaired by the alcohol." (Plaintiffs Ex. 1).

I. Res judicata

Res judicata, or claim preclusion, precludes the subsequent litigation of any claim which could have been raised previously in another proceeding. The Supreme Court has held that *res judicata* does not apply in non-dischargeability actions, because it would “force an otherwise unwilling party to try [dischargeability] questions to the hilt in order to protect himself against the mere possibility that a debtor might take bankruptcy in the future.” See Brown v. Felsen, 442 U.S. 127, 133-39, 99 S.Ct. 2205, 2211-13, 60 L.Ed.2d 755 (1991); Matter of King, 103 F.3d 17, 19 (5th Cir. 1997) (holding that *res judicata* does not apply in bankruptcy nondischargeability proceedings). The Court was further concerned that giving finality to such rulings would undercut the jurisdiction of the bankruptcy court. Brown, 442 U.S. at 135, 136. Pursuant to the above, Mr. Leggett’s claim that *res judicata* applies to this judgment is hereby denied.

II. Collateral Estoppel

Collateral estoppel, or issue preclusion, bars re-litigation of issues previously decided in a judicial or administrative proceeding if the party against whom the prior decision is asserted had a "full and fair opportunity" to litigate the issue in an earlier case. See Allen v. McCurry, 449 U.S. 90, 95, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980); United States v. Irvin, 787 F.2d 1506, 1515 (11th Cir.1986); Sorrells Constr. Co. v. Chandler Armentrout & Roebuck, P.C., 214 Ga.App. 193, 193-94, 447 S.E.2d 101 (1994). The purpose of collateral estoppel is to prevent parties from re-litigating

previously decided issues, promote judicial economy, and ensure finality of rendered judgments.

In the present case, Defendant, Byron Dale Leggett, claims that the judgment of the State Court is excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(9) which provides in pertinent part as follows:

(a) A discharge under . . . this title does not discharge an individual debtor from any debt--

(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

11 U.S.C. § 523(a)(9). Defendant bears the burden of proving nondischargeability under § 523(a)(9). Grogan v. Garner, 498 U.S. 279 (1991), and must therefore prove that the personal injury was caused by Debtor's operation of a motor vehicle and that such operation was unlawful because the Debtor was intoxicated. In re Brunson, 82 B.R. 634 (Bankr. S.D.Ga. 1988).

Collateral estoppel applies in Section 523(a) dischargeability actions. Grogan v. Garner, 498 U.S. 279, 284 n. 11, 111 S.Ct. 654, 658 n.11 112 L.Ed.2d 755 (1991); Meyer v. Rigdon, 36 F.3d 1375, 1378 (7th Cir.1994); In re Davis, 3 F.3d 113, 114 (5th Cir. 1993); In re Yanks, 931 F.2d 42, 43 n. 1 (11th Cir.1991). Moreover, federal

courts must give the same preclusive effect to prior judgments of state courts as those judgments have “by law or usage” in the courts of that state. 28 U.S.C. § 1738 (1994); In re St. Laurent, 991 F.2d 672, 675-76 (11th Cir.1993). Therefore, this Court must apply the law of the State of Georgia in order to determine the preclusive effect of the judgment against Debtor in state court. Id. at 675. While collateral estoppel may bar the relitigation of factual issues, however, the ultimate issue of dischargeability is a legal question over which the bankruptcy court has exclusive jurisdiction. In re Halpern, 810 F.2d 1061 (11th Cir. 1987).

Two Georgia statutes recognize the conclusive effect of judgments by providing as follows:

A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside. O.C.G.A. § 9-12-40.

Where the merits were not and could not have been in question, a former recovery on purely technical grounds shall not be a bar to a subsequent action brought so as to avoid the objection fatal to the first. For a former judgment to be a bar to subsequent action, the merits of the case must have been adjudicated. O.C.G.A. § 9-12-42.

A judgment of default is a “judgment on the merits” for purposes of § 9-12-42. Butler

v. Home Furnishing Co., 163 Ga.App. 825, 296 S.E.2d 121 (1982); Fierer v. Ashe, 147 Ga.App. 446 (1978); however, satisfaction of § 9-12-42 is not conclusive. According to Georgia law, for a party to assert the doctrine of collateral estoppel the issue must have been (1) raised in the prior proceeding, (2) actually and fully litigated, (3) decided by a court of competent jurisdiction, and (4) necessary to the final judgment. See Kent v. Kent, 265 Ga. 211, 452 S.E.2d 764 (1995) (citing Boozer v. Higdon, 252 Ga. 276, 278 313 S.E.2d 100, 102 (1984)); Restatement of Judgments, Second, § 27 (1982).

Assuming without deciding that the first three elements are met, Defendant has not met his burden of proving that a determination that Walker was driving under the influence was an essential basis for the state court's judgment of default. The 11th Circuit, in In re St. Laurent, noted the requirement that the determination of the issue be a critical and necessary part of the state court's ruling:

If the judgment fails to distinguish as to which of two or more independently adequate grounds is the one relied upon, it is impossible to determine with certainty what issues were in fact adjudicated, and the judgment has no preclusive effect.

991 F.2d at 676 (citing 1B James W. Moore et al., Moore's Federal Practice ¶ 0.443 at 782 (1992)).

The present record does not sufficiently permit an accurate determination of the underlying basis for the state court's judgment. Leggett alleged several grounds of negligence in his complaint, including failure to keep a proper lookout, failure to yield the right-of-way, failure to avoid collision, and driving under the influence "to the extent that he was a less-safe driver." Plaintiff's Exhibit 2, ¶ 7-11. Neither the verdict as rendered by the jury, nor the Judgment issued by the state court judge, indicate on which of these grounds the jury determined damages.² Upon review of the evidence submitted, I hold that the Defendant has not shown that the prior judgment of the state court meets the requirements of collateral estoppel under 28 U.S.C. § 1738. Moreover, since Plaintiff affirmatively denied at trial that he was DUI and there is no evidence to contradict his sworn testimony, Defendant has failed to meet his burden of proving the exception to discharge. Accordingly, the claim of Byron Dale Leggett is discharged.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT

² The jury verdict form states that "by clear and convincing evidence . . . [Walker's] actions showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of conscious indifference to consequences." See Defendant's Answer. Defendant's complaint in State Court alleged both that Walker was driving under the influence and also that he had an opportunity to avoid the accident - both of which are possible grounds on which to find conscious indifference. See Bartja v. Nat'l Union Fire Ins. Co. of Pittsburgh, 218 Ga. App. 815, 463 S.E.2d 358 (1995), *cert. denied*, (January 26, 1996) ("Nor is there evidence that at the time of the collision McConico was speeding, traveling too fast for conditions, driving under the influence of alcohol, had an opportunity to avoid the collision, or acted with such a wilful and wanton lack of care as to entitle a jury to presume he was consciously indifferent.").

The state court judge entered a Judgment which states only that "[a]fter consideration of the evidence and testimony as submitted . . . It is hereby ordered, decreed, and adjudged that the Plaintiff have judgment against [] Leroy Walker." See Defendant's Answer.

IS THE ORDER OF THIS COURT that Debtor's obligation to Byron Dale Leggett arising out of the judgment of the State Court of Glynn County, Georgia, in the amount of \$22,601.15 is discharged in this case.

Lamar W. Davis, Jr
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ___ day of September, 1997